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Attorneys for Defendant/Counterclaimant.
DATAWAY, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AT&T Corp.

PLAINTIFF,

v.

Dataway, Inc.

DEFENDANT.

CASE NO. : C07-02440 MMC

**DECLARATION OF SIMON LEWIS IN
SUPPORT OF MOTION TO
COMPLAINT FILED BY AT&T**

Dataway, Inc.

COUNTERCLAIMANT

v.

AT&T Corp.

COUNTERDEFENDANT

**Date: Friday, December 14, 2007
Time: 9:00 am
Courtroom: No. 7**

1 I, SIMON LEWIS, President of Defendant Dataway, Inc. (hereinafter
2 “Dataway”), declare:

3 1. In my position as President of Dataway, I, SIMON LEWIS, am one of
4 only two officers of the company.

5 2. I am also Dataway’s Agent for Service of Process.

6 3. In January 2003, I entered into a service contract consolidating all of
7 Dataway’s business telecommunication services with SBC/AT&T. SBC/AT&T set up a
8 slamming protection, a means to prevent a switching of telecommunication services.

9 4. On July 24, 2006, hackers accessed Dataway’s voice mail system using
10 AT&T’s Legacy T network. Legacy T is a service Dataway never subscribed to and neither
11 I nor any other representative ever authorized the specific account used.

12 5. After this incident, I spoke with AT&T’s technical team in New Jersey
13 who acknowledged that merely the call’s routing number pointed to Dataway, but that the
14 calls were not executed from our authorized accounts.

15 6. I was assured that AT&T would waive its charges for the fraudulent calls
16 once Dataway formally disputed them because “they were very familiar with this kind of
17 phone hacking occurrences and advised at the time of the illegal calls that this was
18 epidemic, that they could easily see this pattern of illegal usage and that these charges
19 would be waived.”

20 7. Subsequently, I submitted Dataway’s request to waive the disputed calls.
21 Yet in multiple additional correspondences, AT&T sent past due reminders and a Notice to
22 Disconnect for Dataway’s account.

23 8. Prior to November 1, 2006, Francisco Molieri, Dataway, Inc.’s
24 Accountant, on my instructions, contacted and informed AT&T as well as AT&T’s local
25 managers, and four administrative authorities, amongst them the F.C.C. and C.P.U.C.
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1 Further, Dataway submitted to AT&T its Fraud Resolution form with supporting
2 documentation.

3 9. On January 17, 2007, AT&T was served by F.C.C. with Dataway's
4 informal complaint. In January, 2007, Dataway was notified that its case had been referred
5 to the C.P.U.C.

6 10. Prior to July 10th through July 14th, 2007, I was on a business trip
7 overseas and out of state, and the only other officer of Dataway, Inc., Eoghan
8 O'Neill was not in the office due to his fractured foot, requiring surgery.

9 11. On July 11, 2007, Francisco Molieri, Dataway, Inc.'s Accountant and a
10 position not authorized to accept service of behalf of Dataway, Inc. and/or in the agent for
11 service of process' absence, was called out to the reception area in the early
12 afternoon. Mr. Molieri, the receptionist and one other employee learned that the individual
13 was attempting to serve a summons and complaint on Simon Lewis as Agent for Service of
14 Process for Dataway, Inc.. Having no authority to accept service on Dataway, Inc.'s behalf,
15 Mr. Molieri accordingly refused to take the documents and informed the process server that
16 he would need to come back the following week after I (the agent for service of process)
17 had returned to give me the documents personally. At that point, the process server said "I
18 was just going to shuffle them from under the door," to which Mr. Molieri replied "do as
19 you must but I am not accepting these documents." The process server then proceeded to
20 drop the summons, complaint and court document consisting only of Judge Conti's recusal
21 on Dataway's front counter and left. Mr. Molieri, brought the documents to my attention
22 for the first time on my first day back in the office after a three week absence on July 16,
23 2007. The Reassignment Order and new Case Management dates were not amongst these
24 documents left on July 11, 2007.

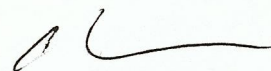
25 12. On August 1, 2007, Francisco Molieri, on my instruction, delivered,
26 without any legal assistance a Letter of Appeal to the Consumer Affairs Bureau at C.P.U.C.

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1 I declare under penalty of perjury under the laws of the State of
2 California that the foregoing is true and correct, if called upon to testify, I could or
3 would competently testify thereto and that this declaration was executed this 15th
4 day of October, at San Francisco, California.

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7 DATED: October 15, 2007

Respectfully Submitted,

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10 SIMON LEWIS

11 President of Dataway

12 For Defendant/Counter-Plaintiff
13 Dataway, Inc.
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